IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4274 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NARMADA CEMENT COMPANY LIMITED - Petitioner(s)
Versus
BM PANDYA - Respondent(s)

==========

Appearance :
MR NIRAV JOSHI for Petitioner,
MR KD PANDYA for Respondent,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/06/2007

ORAL JUDGMENT

1. Mr.Nirav Joshi, learned counsel for the petitioner for Nanavati Associates and Mr.K.D. Pandya, under the

authority of Mr.Mukesh H.Rathod, learned counsel for the respondent.

2. The employer, being aggrieved by the impugned Award dtd.10/2/1988 made by the Presiding Officer, Labour Court, Anand in Reference (LCA) No.1067 of 1992 (Old No.58 of 1992), is before this Court with a submission that the learned court below was unjust in holding that the resignation was secured from the employee under duress, pressure or coercion.

3. Short facts necessary for disposal of the present writ application are that according to the case of the petitioner management, the present respondent workman tendered his resignation on 21/3/1991, the said resignation was accepted by the petitioner management on 27/3/1991 and was to become effective from 31/3/1991. The letter of acceptance was communicated to the respondent and the said letter was received by the respondent on 8/4/1991. According to the petitioner management, the matter was referred to the Conciliation Officer. The petitioner says that the respondent workman stated before the Conciliation Officer that he had withdrawn the resignation letter, but on being asked to produce the withdrawal letter, the respondent

workman could not produce a copy of the said letter.

4. The petitioner management further says that the reference came to be made somewhere in February, 1991 and in the original pleadings, there was no reference to the withdrawal letter. It is submitted that the respondent at the time of his cross-examination did not even speak that he had issued some withdrawal letter. It is submitted that by way of an amendment in September, 1995 i.e. almost after a period of three and half years, the respondent introduced the plea of withdrawal of resignation, but, however, in support of the said pleadings, the respondent did not re-examine himself nor provided any opportunity to the petitioner management to disprove the document. It is submitted that simple production of the document would not amount to proof of the document and the court below was absolutely unjustified in relying upon an unproved document.

5. Mr.Pandya, learned counsel for the respondent, on the other hand, submits that the respondent did not cross-examine the petitioner in relation to the withdrawal letter. It is also submitted that the withdrawal letter bears seal of the management and signature of the receiving Clerk and the court below was not unjustified in relying

upon the said letter dtd.27/3/1991 which was received in the office of the management on 28/3/1991. He, however, submits that though they had called for the Inward-Outward Register, but instead of producing the same, the present petitioner submitted that no such document was ever received by them and they had no Inward Register. According to him, the petitioner, in support of their contentions, except filing an affidavit, did not do anything. He submits that the award deserves to be maintained.

6. It is trite to say that the production of the document is not proof of the document. Under the Evidence Act, a party which relies upon a fact or a document has to prove the existence of the document and the contents of the same and is also required to prove the pleaded facts. If such fact or document is proved by the party asserting it, but are not challenged by the other-side, then the fact and document would stand proved.

7. In a given case, the other-side may lead evidence and show to the Court that in comparison to the evidence from party asserting the fact, the evidence of the other-side is more reliable, then, the Court may record a finding in favour of the party which is controverting the evidence.

In such a case, the fact would stand disproved. In a given case, if a party produces a document or simply asserts a fact, but, does not proceed to prove it in accordance with law, then, the fact and the document would remain unproved.

8. In the present case, the fact of submission of the withdrawal letter and withdrawal letter itself remain unproved. If the documents and the facts remained unproved, then, there is no burden upon the other-side to disprove the said facts or documents.

9. In the present case, the learned Labour Court had also held that in the cross-examination of the workman, no suggestions were made to him that the workman did not submit his resignation and the same was not received by the management.

10. It is submitted by Mr.Joshi, learned counsel for the petitioner that after the amendment, the workman did not step in the witness box.

11. When the Court was dictating the Judgment, Mr.Joshi stood up and said that in fact, the workman was not examined at all before the amendment of the pleadings but was examined after the pleadings were amended and in the pleadings, the workman clearly stated that he

had sent withdrawal letter through a messenger. He also admits that the document was not only produced, but was proved, by its production during the course of the statement and in support of the submission of the letter, the workman had also examined the messenger.

12. I must record my displeasure against conduct of Mr.Joshi, learned counsel for the petitioner, who, in the zeal to seek an order in his favour, did not inform the correct facts to the Court, it appears that after the wisdom had dawn upon him, he had made correct statements. It is expected of a counsel that before he makes a statement at bar to persuade the Court to rely upon the statement, he must read the entire brief and then only, make a statement before the Court.

13. The other-side had simply said that they never received the withdrawal letter. However, they did not say that the receiving seal on the copy of the withdrawal letter was forged one.

14. If the fact was proved and the petitioner management failed in disproving the document, then ordinary sequel would be to hold in favour of the workman that he sent the document, the document was received and in token of the receipt of the document, seal was affixed by the

office of the management.

15. Letter dtd.27/3/1991 received in the office of the petitioner management would clearly show that the resignation was obtained by pressure, coercion etc. If such would be the finding, then, such a resignation could not be accepted. The learned court below was absolutely justified in holding that the withdrawal letter was sent on 27/3/1991, which was received in the office of the petitioner management on 28/3/1991 and the workman could successfully prove that the resignation was the result of undue pressure and coercion.

16. I find no reason to interfere. The petition deserves to and is accordingly dismissed with cost of Rs.3000=00 (Rupees Three Thousand only) to be paid by the petitioner to the other-side. Rule is discharged. Interim relief, if any, is vacated.

(R.S. GARG, J.)

rafik